

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

EMERALD COAST LIGHTING &  
SUPPLY, INC.,

Appellant,

v.

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

CASE NO. 1D04-5061

CRYSTAL BEACH DEVELOPMENT  
CO. OF NORTHWEST FLORIDA,

Appellee.

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Opinion filed December 19, 2005.

An appeal from the Circuit Court for Okaloosa County. G. Robert Barron, Judge.

James Harvey Tipler of The Law Practice of James H. Tipler, Destin, for Appellant.

John R. Dowd, Jr. of Dowd Law Firm, Destin, for Appellee.

PER CURIAM.

We find that genuine issues of material fact exist in this case concerning payment of the promissory notes because appellant adequately, although not artfully, raised the issue of payment in response to appellee's motion for summary judgment.

See DeAtley v. McKinley, 497 So. 2d 962, 963 (Fla. 1<sup>st</sup> DCA 1986) (“[I]n a summary judgment proceeding, the trial court should look beyond the pleadings to determine whether genuine material facts are in dispute. The affirmative defenses raised in the appellants’ affidavits in opposition to summary judgment, although not properly pled, disclose the existence of genuine issues of material fact.” (case citations omitted)). Accordingly, we REVERSE the order granting summary judgment and REMAND for further proceedings.

KAHN, C.J., HAWKES, and THOMAS, JJ., CONCUR.